

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
July 13, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, July 13, 2011.

Present were Chairman Jon Britt, Vice-Chair Joe Blakaitis, Ron Forlano, John Fricker and Randy Gilbreath.

Absent: None.

Also present were Director of Community Development Andy Garman; Council Liaison Chuck Burdick; and Town Clerk Lori Kopec.

Others Present: Mayor Dave Wessel and Willo Kelly.

Absent: Permit Coordinator Sandy Cross.

Chairman Britt called to order the Regular Meeting of the Planning Board for July 13, 2011 at 6:33 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of Town Ordinances related to Restaurants and Eating Establishments

Director Garman stated that the Board discussed at their last meeting a matrix and items that they wished to include in the revised draft ordinance. He stated that he had drafted an ordinance which included providing a consistent process for review and approval of eating establishments in all zoning districts as well as a conditional use permit review of all eating establishment applications; provided a definition for eating establishments to include full service, counter service and carry out food service businesses; included language that prohibited drive-thru or drive-in eating establishments; provided documentation submittal requirements for eating establishment applications which included a provision for detailed floor plans for all interior and exterior spaces; established a set of review procedures and standards for outdoor dining areas; and revised the parking requirements in order to address outdoor dining areas and parking minimums for all eating establishments. He went on to review the ordinance with the Planning Board and audience.

Chairman Britt suggested that the Board review the draft ordinance and give their comments on it.

Vice Chair Blakaitis noted that tables had to be contiguous to a storefront in the ordinance. He asked if it would apply to entertainment as well. Director Garman stated that it was not addressed in the draft ordinance. Vice Chair Blakaitis thought there could be situations where it would make things impossible and become an either/or issue. Director Garman suggested that it be made a standard where it would have to be contiguous or have it addressed during the Conditional Use Permit process. Chairman Britt thought it would be a lot of detail that would be required for the permit. Vice Chair Blakaitis stated that he was troubled with how entertainment would fit in the new ordinance if the store owner was abiding by all of the other requirements and there were no objections from adjacent store owners. He stated that he wasn't sure if the issue needed to be addressed, but added that the way the draft ordinance was written, the existing entertainment at the Waterfront Shops would not be allowed to have the band set up where they do now. He asked if it wasn't addressed, if it should be ignored. Director Garman stated that he could add some general language to address it. Chairman Britt thought it should be left out.

Member Forlano stated that the issue was a question of fairness in group developments. He stated that if he was renting a corner store and his customers had the ability to use the deck in front of his store and another store owner had entertainment on the deck, it would prohibit his customers from sitting on the deck in front of his store. Chairman Britt wondered at what point the Town would start or stop policing group developments. He wondered if the Town would be going too far and didn't think it should be something the Town should have to deal with. He noted that the Board was discussing eating establishments and felt that Member Forlano's issue was one that could be dealt with by the owner of the group development.

Member Fricker thought the Board member's points were well taken but wasn't sure how he felt. He thought it was important for safety and egress that there be an area in the common area of a group development where people could traverse without having to deal with picnic tables and congestion getting in their way. He stated that he did not want to be overly restrictive, but thought there needed to be a balance. He stated that his concern was that the eating establishment at the Waterfront Shops would not be able to operate under the new ordinance.

Member Gilbreath noted that no matter what, the issue at the Waterfront Shops was still circumventing the parking issue. He felt the eating establishment at the Waterfront Shops was causing a disadvantage to other establishments that were following the rules with regard to the parking requirements. Director Garman agreed and added that the establishment at the Waterfront Shops would have to address the issue when they come back to have their Conditional Use Permit amended.

Member Fricker felt that special events involving music should be left to the landlord of the group development. He stated that he was concerned about the rights of the adjacent store owners.

Vice Chair Blakaitis asked if the ordinance was passed as written, what would prevent another eating establishment from using the table in front of their establishment even though an existing eating establishment used the tables. Chairman Britt noted that the ordinance did not address common areas. Vice Chair Blakaitis stated that the new establishment's customers could sit at the other establishment's tables even though they could be perceived as not being for any

establishment to use. Director Garman stated that he was correct. He thought it may require some thought to make the distinctions necessary to see it for what it was.

Director Garman stated that another provision to consider was if an establishment was truly a carry out restaurant, the food would need to be placed in a bag so the customer could leave the premises with their food.

Member Fricker thought the reason the Board was discussing the ordinance was due to the studied effort to push the envelope by one eating establishment to the point where there were issues with parking, noise, passage, trash and sufficient restrooms. He added that the notion was to try to apply some type of limit to it so there wouldn't be others that would try to do the same. He stated that he would rather recommend something more restrictive now that could be amended at a later date than to have it too watered down and reactionary. He stated that he liked the draft ordinance as it was written. Chairman Britt agreed with Member Fricker's comments and felt the draft ordinance was a good start.

Member Forlano noted that the loophole with regard to restrooms for take-out restaurants was that if they were considered 100% take-out, the establishment would not be required to provide restrooms. Director Garman stated that when an establishment goes through site plan process and has a take-out restaurant with six tables shown on the site plan contiguous to their business, it would not be likely be approved if it was supposed to be a true carry-out restaurant. Vice Chair Blakaitis asked what would happen if the establishment did not show any tables on their site plan even though there would be common area tables in front of the establishment. Director Garman stated that they would not be approved. He suggested the following language be added to the draft ordinance: "Any tables in a group development that are directly contiguous to any carry-out restaurant shall be considered seating for that restaurant." It was *consensus* of the Board to add the new language.

Chairman Britt asked the Board for their thoughts on parking. Member Forlano thought it did not need to be addressed as it would be a sporadic problem. Chairman Britt agreed. Member Fricker asked Member Forlano if he thought the regulations on parking were too specific and restrictive. Member Forlano felt that it should not be too restrictive and that the language was fine as it was drafted. Director Garman stated that the Board may consider an exemption from parking requirements that would apply to outdoor dining. He added that the gross floor area could be changed so that a certain square footage was exempt. Chairman Britt stated that if the seating area was to be contiguous, it could be tied to the parking. He asked if the 25% should be stricken from the draft ordinance. Director Garman suggested the following language: "...all restaurants shall be allowed to have up to 200 square foot of outdoor dining area that does not count towards parking. Beyond that, 1 space per every 150 square feet." Chairman Britt felt the proposed language was more consistent with the rest of the ordinance.

Member Fricker asked Director Garman if he was comfortable with the new language. Director Garman stated that he would bring back some examples with regard to seating to the Board at their next meeting. He added that before the ordinance goes before Council, there should be more input. Member Forlano stated that he was in favor of having some of the restaurant owners attend a future Planning Board meeting. Chairman Britt agreed but thought it should be at the Board's September meeting when the owners would have more availability.

Chairman Britt clarified that the 25% would be removed from the draft ordinance. Director Garman stated he was correct. He stated that he would take the new standard and show the Board what it equates to in some diagrams at the next meeting. Chairman Britt summarized that the parking item would be changed in the draft ordinance, outdoor dining being contiguous would be changed, the changes would come back to the Board in August and then in September or October, the Board would invite the owners of the local restaurants to give input on the ordinance and go from there.

Update on Town Council Review of Ordinance 11-04, an Ordinance Regulating Erosion Threatened Structures on the Ocean Beach

Director Garman stated that at their July 6, 2011 meeting, the Town Council had conducted a public hearing on Ordinance 11-04 which pertained to erosion threatened oceanfront structures. He stated that the Council sent the ordinance back to the Board for further review based on comments received by the public, Town staff and Town Attorney Hobbs. He stated that he had received several calls and emails, as well as meeting with some of the oceanfront property owners who had questions regarding the subjectivity of determining where the seaward toe of the dune was located. He went on to show the Board and audience some photographs from the beach of the erosion that was present on the beach.

Director Garman stated that it was agreed at the Council meeting that Town Attorney Hobbs should attend a Planning Board meeting to discuss in detail what his recommendations were for the ordinance. He stated that the primary item that will need to be addressed is the seaward toe of the dune. He added that the other issue was the timing of the ordinance and it was suggested that the Planning Board hold a second meeting. Chairman Britt thought the Board could have a second meeting in order to move the process along. He added that the August agenda will be pretty full for the Board. Member Fricker thought a second meeting was a good idea. Chairman Britt asked if Town Attorney Hobbs would be able to make the Board's second July meeting. Director Garman thought he would.

Chairman Britt suggested that the meeting be held on July 27, 2011 at 6:30 p.m. Member Fricker suggested that it be held on Wednesday, July 20, 2011 at 6:30 p.m. Director Garman stated that Town Attorney Hobbs wanted to have an opportunity to meet with the Board and hold a Closed Session with them to discuss the issues. Chairman Britt suggested keeping the meeting for July 27, 2011. Vice Chair Blakaitis asked if the Board could meet with Town Attorney Hobbs for a Closed Session at any time. Member Fricker wondered if the Board even needed a Closed Session. Chairman Britt stated that if the Board could meet with Town Attorney Hobbs on July 20, 2011 or July 27, 2011 to obtain his input, than the Board could send the ordinance back to Council for their August 3, 2011 meeting. Director Garman stated that having the meeting on July 20, 2011 would be the only opportunity to have enough time to send it back to Council for their August 3, 2011 meeting. He added that if there were substantive changes, the meeting would have to be re-advertised for a public hearing. It was *consensus* of the Board to hold the next meeting on Wednesday, July 20, 2011 at 6:30 p.m.

APPROVAL OF MINUTES

Planning Board Meeting June 8, 2011

Chairman Britt directed the Board to review the minutes from the June 8, 2011 meeting.

Member Fricker had one change to Page 4 of the minutes.

Vice Chair Blakaitis moved to approve the minutes as amended. Member Gilbreath seconded.

Motion carried 5-0.

STAFF COMMENTS

Director Garman stated that staff was contacted recently by the North Carolina Coastal Federation to give notice that the Town had won the Pelican Award for its ordinance on the prohibition of sandbags.

ADJOURNMENT

There being no further business to discuss, Chairman Britt recessed to reconvene the meeting until Wednesday, July 20, 2011 at 6:30 p.m.

The time was 7:57 p.m.

Approved: _____
/s/ Jon Britt, Chairman